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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1999)

MD Docket No. 98-200

Comments of ARDIS Company

ARDIS Company ("ARDIS") hereby submits these comments in response to the Notice of Inquiry ("NOI") released by the Commission on December 4, 1998, in the above-captioned proceeding.¹ The NOI seeks comment and suggestions on a number of requests for revision of the Commission's Schedule of Regulatory Fees. Although the requests for revision were filed in response to the Fiscal Year 1997 and 1998 fee schedules, the Commission's inquiry focuses on modifications that would become effective for the Fiscal Year 1999 schedule.

ARDIS's comments concentrate on one of five issues discussed in the NOI. In particular, ARDIS urges the Commission to revise that portion of the existing fee structure that places all commercial mobile radio service ("CMRS") specialized mobile radio ("SMR") licensees in the CMRS Mobile Services fee category regardless of the amount of spectrum held by such licensees or the type of service provided. ARDIS supports the requests of various parties who have asked the Commission to reclassify as CMRS Messaging Services those 800 MHz and 900 MHz SMR licensees that compete with other offerings included in the CMRS Messaging category. In the alternative, ARDIS supports creation of a new CMRS Broadband Messaging Services or a Non-

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, MD Docket No. 98-200, FCC 98-298 (rel. Dec. 4, 1998) ("NOI").

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Voice CMRS Mobile Services fee category that recognizes the unique position of these offerings and applies to them the same fee as that applied to services included in the CMRS Messaging Services category.

I. Inclusion Of All CMRS SMR Licensees In The CMRS Mobile Services Fee Category Violates Congress's Mandate That Competing Mobile Services Be Subject To Comparable Regulatory Requirements

As indicated in the *NOI*, in Fiscal Year 1998, CMRS licensees authorized to operate on broadband spectrum were subject to payment of the CMRS Mobile Services fee of \$0.29 per feeable unit.² Services in this category include the Specialized Mobile Radio Services (Part 90), Personal Communications Services (Part 24), Wireless Communications Services (Part 27), Public Coast Stations (Part 80), and Public Mobile Radio Services (Cellular, 800 MHz Air-Ground Radiophone, and Offshore Radio Services regulated under Part 22).³ Licensees authorized to operate on narrowband spectrum were subject to payment of the CMRS Messaging fee of \$0.04 per feeable unit.⁴ Services in this category include private paging, interconnected Business Radio Services, 220-222 MHz Land Mobile Systems, Public Mobile One-Way paging, and licensees of Personal Communications Services one-way and two-way paging.⁵

As the *NOI* notes, several parties have requested revision of the demarcation between the CMRS Mobile Service fee category and the CMRS Messaging Service fee category. ARDIS has

² *Id.*, ¶ 5 and n.13. *See also Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, MD Docket No. 98-36, FCC No. 98-115, at Attachment F (rel. June 16, 1998) (“1998 Regulatory Fees Report and Order”).

³ *NOI*, n.12. *See also 1998 Regulatory Fees Report and Order*, at Attachment H, ¶ 14.

⁴ *NOI*, n.15. *See also 1998 Regulatory Fees Report and Order*, at Attachment F.

consistently supported the position of BellSouth Wireless Data L.P., (“BellSouth WD”), formerly Ram Mobile Data USA Limited Partnership (“RMD”), in this regard. RMD filed a petition for reconsideration of the Commission’s *1997 Regulatory Fees First Report and Order*, which is the decision that first established the CMRS Mobile Services and CMRS Messaging Services categories. In that petition, RMD explained that the classification of all CMRS SMR licensees as CMRS Mobile Services is inappropriate as applied to those SMR systems that lack the spectrum capacity to compete with other broadband services included in the CMRS Mobile Services category. In addition, RMD pointed out that, because such operators compete with other services classified as CMRS Messaging Services, imposition of an eight times greater fee obligation is unfair and violates the concept of regulatory parity.⁶

BellSouth WD reasserted these points in commenting on the Commission’s proposed 1998 regulatory fees. BellSouth WD’s comments were supported by the American Mobile Telecommunications Association (“AMTA”). The *Commission’s 1998 Regulatory Fees Order* nevertheless followed the same classification scheme with regard to the CMRS Mobile Services and CMRS Messaging Services fee categories. BellSouth WD filed a request for reconsideration of the *1998 Regulatory Fees Order*, which ARDIS again supported.

The concerns identified by BellSouth WD in each of these pleadings apply equally to ARDIS. Although ARDIS holds 800 MHz as opposed to 900 MHz SMR licenses, ARDIS, like

(...Continued)

⁵ NOI, n.14. See also *1998 Regulatory Fees Report and Order*, at Attachment H, ¶ 15.

⁶ The 1997 Regulatory Fee Schedule imposed a fee of \$.24 per unit on entities included in the CMRS Mobile Services category and a fee of \$.03 per unit on entities in the CMRS Messaging Services category.

BellSouth WD, does not have access to anywhere near the amount of spectrum needed to compete with other “broadband” licensees in the CMRS Mobile Services fee category. Most of ARDIS’s 800 MHz SMR licenses are site-specific and offer access to a single 25 kHz channel pair. In comparison, 25 MHz of spectrum is available to cellular carriers and 10 MHz or 30 MHz is available to PCS carriers included in the CMRS Mobile Services fee category. Even if a site-specific 800 MHz SMR operator, like ARDIS, is able to secure a license for more than one channel, the quantity of spectrum available to cellular and broadband PCS operators is an order of magnitude greater – ten 25 kHz channel pairs still yield only 2 percent of the spectrum assigned to each cellular provider.

ARDIS submits that, because of these spectrum constraints, the mere fact that SMR spectrum is defined as “broadband” cannot be understood to imply that all CMRS SMR systems are capable of competing with other broadband CMRS offerings. ARDIS, BellSouth WD, and other SMR systems at both 800 MHz and 900 MHz face spectrum limitations that make the services they offer more like narrowband services included in the CMRS Messaging category. Indeed, like BellSouth WD, ARDIS’s principal competitors are 220 MHz, narrowband PCS, interconnected Business Radio Service, and paging offerings included in the CMRS Messaging Services category.

The spectrum limitations faced by site-specific SMR licensees significantly reduce the amount of data these operators are able to transmit and the number of customers they are able to serve.⁷ As a result, most site-specific SMR operators target their services toward specialized

⁷ While cellular and broadband PCS systems can devote several hundred channels to data-based applications, the entire ARDIS system is in many cities limited to a single pair of 25 kHz channels.

niche markets. For example, ARDIS offers several niche applications including: (1) instant checking of drivers' records by law enforcement officers; (2) ordering of parts, machine histories, and billing information by field service personnel; and (3) processing of data for the pick-up and delivery of rental cars by customer service personnel. ARDIS's offerings are much more closely akin to those provided by licensees in the CMRS Messaging Services category than those offered by cellular or broadband PCS licensees. Cellular and broadband PCS data applications are typically targeted to broader markets because they can be bundled in a single package with voice and other offerings. Spectrum limitations prevent ARDIS from providing bundled packages of this nature. In fact, ARDIS does not offer voice services at all.

For the reasons outlined above, ARDIS agrees with BellSouth WD and AMTA that inclusion of all CMRS SMR licensees in the CMRS Mobile Services fee category – without regard to the amount of spectrum held by such entities or their ability to compete with other broadband CMRS offerings – violates Congress's mandate that competing mobile service providers be subject to comparable regulatory requirements.⁸ To avoid this result, ARDIS urges the Commission to reclassify these and similar offerings into the CMRS Messaging Services category along with those CMRS services with which they compete. In the alternative, ARDIS supports establishment of a new CMRS Broadband Messaging Services or a Non-Voice CMRS

⁸ See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 7988, 7993 (1994) (citing the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(d)(3), 107 Stat. 312, 392 (1993)).

Mobile Services fee category that recognizes the unique position of offerings such as those provided by BellSouth WD and ARDIS.⁹

II. The Commission And Affected Licensees Should Work Together To Develop A Means For Overcoming Any Administrative Difficulties Associated With The Requested Revision Of The CMRS Fee Categories

In the *1998 Regulatory Fees Report and Order*, the Commission declined to adopt BellSouth WD's and other related suggestions because the agency was "aware of no existing records or other information that would permit development of a sub-category of CMRS Mobile Services for those CMRS licensees who use broadband spectrum to deliver CMRS Messaging Services."¹⁰ On this basis, the Commission concluded that adoption of such proposals could "impose upon the licensees themselves and our staff an undue expenditure of administrative resources in the course of preparing the fee payments and processing them."¹¹ Relatedly, the Commission noted that its prior fee schedules had endeavored to "adhere[] to Congress' principle that our fee categories are to be based on the authorization provided to a licensee rather than the use a particular licensee makes of its authorized spectrum."¹²

Based on these same concerns, the *NOI* asks commenters to "include data (or available sources for data) that would enable the Commission to definitively assign each type of service to

⁹ As noted in the *NOI*, Paging Network, Inc. ("PageNet") has suggested that the Commission establish a sub-category for non-voice networks and services within the existing CMRS Mobile Services fee category that would be subject to the CMRS Messaging Services fee. *NOI*, ¶ 6.

¹⁰ *1998 Regulatory Fees Report and Order*, ¶ 46.

¹¹ *Id.*

¹² *Id.*, ¶ 47.

the appropriate proposed fee category and provide an estimate of the number of feeable units contained in each category for FY 1999.”¹³ While the type of information the Commission seeks is not entirely clear, ARDIS believes that it is possible for affected industry members and the Commission staff to work together to develop a workable solution to any difficulties inherent in either the identification of affected authorizations or calculation of the number of affected feeable units. For example, it seems clear that the Commission could easily develop a mechanism for noting authorizations that are used solely for the provision of non-voice CMRS services. Similarly, ARDIS does not believe that it would be overly difficult or cumbersome to determine the affected number of feeable units. In ARDIS’s view, it is critical that the Commission not summarily conclude that revision of the CMRS fee categories in the manner requested by ARDIS is too difficult from an administrative standpoint.

III. Conclusion

For the reasons set forth above, ARDIS urges the Commission to revise the existing demarcation between the CMRS Mobile Services and CMRS Messaging Services fee categories. The current approach classifying all CMRS SMR licensees as CMRS Mobile Services is inappropriate as applied to numerous 800 MHz and 900 MHz SMR systems that lack the spectrum capacity to compete with other broadband services included in the CMRS Mobile

¹³ *NOI*, ¶ 9.

Services fee category and, as a result, contravenes Congress's mandate that competing mobile services be subject to comparable regulatory requirements.

Respectfully submitted,

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